Supreme Court, U. S.
FILED
APR 3 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1406

DAVID GAETANO, and ALAN ERNEST, Next Friend of Unborn Child Roe and All Others Similarly Situated

Petitioners

vs.

EARL J. SILBERT, United States Attorney for the District of Columbia

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Alan Ernest
5713 Harwich Ct. #232
Alexandria, Va 22311

Counsel for Petitioners

INDEX

Opinions Below 1

Jurisdiction 1

Questions Presented 2

Constitutional Provisions Involved . . 2

Statement of the Claim 3

Reasons for Granting the Writ 7

Appendix:

The Case Against the Supreme Court . . A-1

The District Court's Order A-3

AUTHORITIES

Cases:

Kugler v Helfant, 45 L Ed 2d 15 6

Marbury v Madison, 1 Cranch 137 . . . . . 7, 9, 11

The Justice Case, 3 Trials of War Criminals Before the Nuernberg Military Tribunals . . 6, 9

Warth v Seldin, 45 L Ed 2d 343 6

Other Authorities:

The Collected Works of Abraham Lincoln (Basler ed. 1953) 8, 9

The Writings of Thomas Jefferson (Bergh ed. 1907) 10

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1977

DAVID GAETANO, and ALAN ERNEST, Next Friend of Unborn Child Roe and All Others Similarly Situated

Petitioners

vs.

EARL J. SILBERT, United States Attorney for the District of Columbia

---

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The petitioners pray that a writ of certiorari issue to the United States Court of Appeals for the District of Columbia Circuit prior to judgment.

OPINIONS BELOW

The court below issued no opinion. See Appendix A-3, infra, for the order to be reviewed.

JURISDICTION

1. The order to be reviewed was entered by the federal district court on February 16, 1978. See Appendix A-3, infra.

2. The jurisdiction of this Court is invoked under 28 USC 1254(1) and 28 USC 2101(e) and Rule 20 of this Court. This is a petition for certiorari to the Court of Appeals before judgment. Docketed in the Court of Appeals on March 20, 1978, No 78-1250.

QUESTIONS PRESENTED

1. For the ninth time, the Supreme Court is petitioned to overrule Roe v Wade, 410 US 113(1973) on the grounds that it is based on false evidence and millions of lives have been illegally exterminated. Can it be pretended that it is any longer the government of the United States,- any government of Constitution and laws,- wherein a Tribunal holding office for life and asserting to be the ultimate arbiter is charged year after year with millions of illegal homicides by false evidence, and year after year the Tribunal summarily refuses to even listen?

2. The United States District Judge, Louis F. Oberdorfer, effectively ruled that even granting the truth of the allegation in the complaint that the Supreme Court had illegally exterminated millions of lives by false evidence to which it had deliberately adhered, the trial court was bound by Roe v Wade regardless of any claim that it was wrongly decided. Is this not the patently lawless reasoning that led to the conviction of the Nazi judges at Nuremberg?

3. The Court is also petitioned to overrule United States v Vuitch, 402 US 62, on the grounds that it illegally exterminated thousands of unborn victims on no evidence whatsoever.

CONSTITUTIONAL PROVISIONS INVOLVED

FIFTH AMENDMENT: "No person shall . . . be deprived of life . . . without due process of law."

FOURTEENTH AMENDMENT:"(N)or shall any State deprive any person of life... without due process of law."

DECLARATION OF INDEPENDENCE: "We hold these truths to be self evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life ..."

"It is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence." Gulf, Colo & S Fe Ry v Ellis, 165 US 150, 159-160(1897).

STATEMENT OF THE CASE

About December 12, 1977, a complaint was filed in the United States District Court for the District of Columbia. The complaint demanded that the district court suspend Roe v Wade, and order the United States Attorney for the District of Columbia to enforce the D.C. abortion statute, 22 D.C. Code 201, pending a full and fair hearing before the Supreme Court on the questions about the validity of Roe v Wade. The complaint alleged that Roe v Wade was illegal, null and void on the grounds that it was based on false evidence, and unborn children in the District of Columbia were having their lives illegally exterminated in violation of the felony abortion statute, 22 D.C. Code 201, as well as the United States Constitution.

Petitioner David Gaetano had appeared at a Washington abortion clinic to save the lives of the unborn children. Gaetano stood in the doorway to the operating room until arrested and charged with the crime of unlawful entry, 22 D.C. Code 3102. It is claimed that Gaetano was exercising his common law, and perhaps constitutional, right to defend others from felonious assault.

Petitioner Alan Ernest, a lawyer, appears as a next friend to defend the constitutional rights of unborn children pursuant to Rule 17(c), Federal Rules of Civil Procedure.

An EXHIBIT A established that Roe v Wade was based on false evidence by showing that(See EXHIBIT A, page 1, "Summary of Evidence"):

"1. even the Supreme Court admitted in Roe v Wade that if the unborn were a ' "person" within the language and meaning of the Fourteenth Amendment '

then the case for abortion on demand 'of course, collapses, for the fetus' right to life is then guaranteed specifically by the Amendment,' and

"2. the express, universal terms of the Fourteenth Amendment ('nor shall any State deprive any person of life . . . without due process of law') (emphasis added) on their face, protect the lives of the unborn, as everyone else, and

"3. the holdings of Chief Justice John Marshall (that can be traced through the Constitution, The Federalist Papers, and the Federal Convention of 1787) show that the Supreme Court has no lawful power to construe exceptions to express, universal terms (such as 'any person') unless the Court can prove the exception to the express, universal terms beyond a reasonable doubt, and show that 'had this particular case been suggested' to the framers, the 'language would have been so varied, as to exclude it,' and

"4. the Supreme Court presented false evidence to support its conclusion in Roe v Wade that 'the word "person," as used in the Fourteenth Amendment, does not include the unborn' and but for the false evidence, there is not even a credible foundation, much less a compelling one, for denying the protection of the express, universal terms 'any person' to the lives of the unborn, and

"5. the truthful history corroborates that the express, universal terms 'any person' include the unborn, as they do all categories of persons, and more certainly than many groups. The Supreme Court included corporations and aliens as a 'person' within the language and meaning of the Fourteenth Amendment merely on the strength of the express, universal terms 'any person,' without any independent corroborating evidence whatsoever. (The unborn being the only persons ever excluded from the terms 'any person')

"In short, EXHIBIT A shows that the Supreme Court exactly violated the very letter of the Con-

stitution, as well as its spirit, and condemned millions of victims to death whom the Constitution endeavours to preserve."

About January 23, 1978, the United States Attorney for the District of Columbia (hereinafter the "government") filed a motion to dismiss. The government never attempted to prove any of the charges against Roe v Wade to be wrong. Rather the government argued that the complaint failed to state a claim on which relief could be granted on the grounds that the district court was bound by Roe v Wade "regardless of any claim that it was wrongly decided." Government Memorandum of Points and Authorities in Support of Motion to Dismiss 4.

The government also argued that the district court lacked subject matter jurisdiction on the grounds that only "the pregnant mother" has standing to maintain an action. Government Memorandum of Points and Authorities in Support of Motion to Dismiss 2. Thus only the person who intends to kill the unborn child would be able to maintain an action to defend the child's constitutionally protected right to life.

About January 25, 1978, there was a hearing on a motion for a preliminary injunction to suspend Roe v Wade in Washington. Petitioner's counsel went over the false evidence piece by piece, and showed how Roe v Wade was founded upon it. And the government continued to maintain that the district court was bound by Roe v Wade regardless of any claim that it was wrongly decided.

On February 16, 1978, the district court entered its order dismissing the case for failure "to state a claim upon which relief can be granted," citing "Roe v Wade." Appendix A-3. Consequently the district court apparently held that it was bound by Roe v Wade "regardless of any claim that it was wrongly decided."

The district court also asserted, without giving any reasons, that "plaintiffs have not estab-

lished their standing to sue." Appendix A-3. Thus the district court apparently held, as the government urged, that only the person who intends to kill the child has standing to defend the child. (The district court also held, without giving any reason or authority, that "plaintiffs . . . are barred by a previous decision of this Court." Appendix A-3. However Gaetano was not a party to the earlier case and the unborn children were not even in existence when the prior judgment was made.)

It is established that in ruling on a motion to dismiss for lack of standing, and for failure to state a claim upon which relief can be granted, the district court must accept as true all material allegations in the complaint, Warth v Seldin, 45 L Ed 2d 343, 356(1975); Kugler v Helfant, 44 L Ed 2d 15, 25 (1975). The Complaint, at 2, 4 & 6, alleged that "the Supreme Court's abortion decision, Roe v Wade, 410 US 113 (1973) is illegal, null and void on the grounds that it is based on false evidence and millions of lives have been illegally exterminated"; the complaint further alleged that the Court's "illegal, homicidal conduct is premeditated" and thus amounted to "crime."

Consequently, the district court effectively ruled that, granting the truth of the allegation that the Supreme Court had perpetrated the crime of millions of premeditated illegal homicides by false evidence, the district court was bound by Roe v Wade regardless of any claim that it was wrongly decided, and the unborn can not defend their constitutional right to life in a federal court.

It is alleged that the district court's order amounts to the arguments made by the Nazi judges at Nuremberg that they were bound by the "decrees" of the "supreme judge" of Germany, regardless of any claim that the "decrees" were wrong. The Justice Case, 3 Trials of War Criminals Before the Nuernberg Military Tribunals 983-985, 1010-14. The Nuremberg court imposed life sentences on those judges, noting that "The dagger of the assassin was concealed beneath the robe of the jurist." Id., at 985.

The district court was informed that there are upwards of 40,000 killings a year in the District of Columbia in violation of the positive criminal statute, 22 D.C. Code 201, making upwards of 400,000 years of liability each year for judges who aid and abet those killings.See Appendix, A-1, infra.

Consequently it is alleged that under American law the district court's holding (that it could not stop the killings regardless of any claim that the killings are illegal) is tantamount to intentional participation in illegal, judicial homicides, manifests a premeditated design to kill, and amounts to complicity in crime.

REASONS FOR GRANTING THE WRIT

The Supreme Court of the United States is charged with premeditated "falsehood" and the "crime" of millions of premeditated, illegal homicides. It is further charged that this is tantamount to the overthrow of the United States Constitution, and the Declaration of Independence, and the establishment of government by homicidal tyranny in America. The basis is outlined below.

1. In Roe v Wade, the Supreme Court asserted facts to be true. EXHIBIT A demonstrates these unqualified assertions of certitude to be not true. Even if the Supreme Court had no original knowledge of the falsity, Abraham Lincoln warned: "(I)t is an established maxim in morals that he who makes an assertion without knowing whether it is true or false, is guilty of falsehood; and the accidental truth of the assertion, does not justify or excuse him." 1 The Collected Works of Abraham Lincoln 384

2. Furthermore, it appears that the Supreme Court could not have reached its abortion conclusion but for these false assertions,- and it has now seven times deliberately adhered to them. Would not the charge that Lincoln brought against the Dred

Scott case now pertain to Roe v Wade: "It is the first of its kind; it is an astonisher in legal history. It is a new wonder of the world. It is based on falsehood in the main as to the facts . . . upon which it stands." 2 Collected Works of Abraham Lincoln 495 (Basler ed. 1953)

4. Chief Justice John Marshall held that for judges to "swear" to discharge their duties "agreeably to the constitution" and then "to close their eyes on the constitution, and . . . . condemn to death those victims whom the constitution endeavours to preserve" is worse than "solemn mockery," it is a "crime."See also, Appendix at page A-1, infra.

5. It is charged that the Supreme Court first condemned tens of thousands of victims to death on no evidence whatsoever (United States v Vuitch) and then condemned millions of victims to death on false evidence(Roe v Wade). At Nuremberg judges were given life sentences. The Nuremberg court noted that those judges had condemned victims to death based either on no evidence or doubtful evidence; the victims were deemed inferior. "The dagger of the assassin was concealed beneath the robe of the jurist." The Justice Case, 3 Trials of War Criminals before the Nuernberg Military Tribunals 985.

6. The Nuremberg court recounted that Hitler claimed to be the "supreme judge" of Germany; that his word was law; that he could violate the letter and spirit of the German constitution; that he could decree millions of persons to death. Id., 955-1177.

7. Roe v Wade asserts a second method, which amounts to this exact Hitler procedure, for the government to condemn persons to death:

The First, set out in the Constitution, is by conviction by an impartial jury for violation of express laws enacted by the people and applicable to all in the state; with right to representation by counsel; with right to be acquitted unless found

guilty beyond a reasonable doubt; with provision to stop execution if new evidence is discovered.

The Second, set out in Roe v Wade, is for a Tribunal holding office for life (without assistance of counsel to defend the victims) to rule the victims out of the human race as inferiors, in violation of the very letter and spirit of the Constitution, falsifying evidence to make the homicides appear legal, and year after year to repeatedly deny applications showing the exterminations to be illegal.

8. If it were Jews, or Negroes, or Indians who had been thus ruled out of the human race as inferior so that they could be killed for the benefit of the killer, no unprejudiced mind could doubt the criminal tyranny of the decision. But as Jefferson noted, the "friendless" is selected as "the safest subject of a first experiment" of despotism, but others soon follow "as its prey." The Ky Res, 17 The Writings of Thomas Jefferson 388(1907).

9. In connection with the allegation that the Supreme Court has committed the "crime" of millions of premeditated homicides, it should be noted that in 1975, the Supreme Court of Germany held that the clause in the German Constitution, "Everybody has the right to life," also "includes unborn human beings," that "Abortion is an act of homicide," and the state had a "duty" under the Constitution "to protect unborn life."See translation, 63 California Law Review at 1342, 1348-49. Unless reason is to be defined as a mere excuse to make plain words mean anything or nothing at pleasure, and the rule of law based on reason summarily dismissed as a dangerous illusion, then it is of paramount importance to examine how it is possible for the high courts of two major nations, construing constitutional phrases that are in substance identical, to reach diametrically opposing conclusions about the legality of millions of premeditated homicides. That examination, presented in EXHIBIT A, surely permits reasonable people to conclude beyond a reasonable doubt that the Supreme Court closed its eyes on the Con-

stitution and condemned to death those victims whom the Constitution endeavours to preserve; and there appears to be no defense that will not amount to a claim that the Supreme Court is above the law,- as Hitler was to Germany, so the Court is to America.

If it be true, as Chief Justice Marshall once held(see Marbury v Madison, 1 Cranch 137, 163, 176, 178) that "government of laws, and not of men," founded in a "written constitution" deriving its just power from the "supreme" "authority" of "the people" is "the greatest improvement on political institutions," then the overthrow of that government of laws by lawless federal judges may be the most heinous crime in the history of government. Not only is the Constitution overthrown, but the Declaration of Independence is perverted to effectively read that "all men are created equal,- except those created to die for the convenience of others."

"Alas for you lawyers! You have taken away the key of knowledge." Luke 11:52 (N.E. Bible)

"Alas for you, lawyers . . . hypocrites! You are like tombs covered with whitewash; they look well from the outside, but inside they are full of dead men's bones and all kinds of filth. So it is with you: outside you look like honest men, but inside you are brim-full of hypocrisy and crime." Matthew 23:27-29

"Beware of the doctors of the law, who love to walk up and down in long robes, receiving respectful greetings . . . and to have the chief seats . . . they will receive the severest sentence." Mark 12:38-40.

Alan Ernest
5713 Harwich Ct. #232
Alexandria, Va 22311

Counsel for Petitioners

APPENDIX
THE CASE AGAINST THE SUPREME COURT

The evidence appears to support the charge that some Justices of the U.S. Supreme Court have violated federal criminal statutes, such as:

18 USC 242, Deprivation of rights under color of law,- It is a crime for government officials, acting under pretense of law, to willfully deprive persons of their rights secured by the U.S. Constitution. The documentation in EXHIBIT A, at the very least, permits reasonable people to conclude beyond a reasonable doubt that the unborn are persons whose lives are protected by the U.S. Constitution. The evidence that Justices specifically authorized killings throughout the United States, by a willfully false construction of the Constitution, would certainly permit a jury to conclude beyond a reasonable doubt that Justices, acting under pretense of law, had deprived millions of unborn persons of their right to life protected by the U.S. Constitution.

22 D.C. Code 201, D.C. abortion statute,- The felony abortion statute only permits abortions in the District of Columbia to preserve the mother's life or health. The evidence that Justices specifically authorized non-therapeutic abortions in violation of the positive criminal statute, by a willfully false construction of the Constitution, would surely permit a jury to find beyond a reasonable doubt that Justices had aided and abetted those killings.

22 D.C. Code 105 a, Conspiracy,- When Roe v Wade was decided, non-therapeutic abortions were illegal, not just in the District of Columbia, but generally throughout the United States. The evidence that Justices specifically authorized non-therapeutic abortions in violation of the States' positive criminal statutes, by a willfully false construction of the Constitution, would appear to permit a jury to find beyond a reasonable doubt that Justices conspired to effect those killings.

18 USC 1503, Obstruction of justice,- It is a

crime to endeavor to obstruct or impede the due enforcement of the law of the land, even by conduct that is otherwise legal, if the motive is corrupt or dishonest. The evidence that the Supreme Court has been petitioned year after year to overrule Roe v Wade on the grounds that it is based on false evidence and millions of lives have been illegally exterminated, and year after year the Supreme Court summarily refused to even listen, would appear sufficient to permit a jury to conclude beyond a reasonable doubt that Justices had dishonestly endeavored to obstruct or impede the due enforcement of the law of the land.

18 USC 1001, False statements,- The evidence that some Justices, within their official jurisdiction, made or adopted false statements in Roe v Wade, and repeated petitions indicated the false statements to be willful and knowing, might be sufficient to permit a jury to conclude beyond a reasonable doubt that some Justices had made false statements within 18 USC 1001.

18 USC 371, Conspiracy,- It is not only a crime to conspire to commit any criminal offense, but also to conspire to defraud the United States by misrepresentation or the overreaching of those charged with the carrying out of the governmental intention. The evidence already mentioned would appear sufficient to permit a jury to find beyond a reasonable doubt that Justices had not only conspired to commit the above mentioned crimes, but also to defraud the United States.

18 USC 1621, Perjury,- An oath of office to uphold the Constitution would probably not, under ordinary circumstances, support a charge of perjury. However, Chief Justice John Marshall held that for "judges" to "swear" to discharge their duties "agreeably to the constitution" and then "close their eyes on the constitution" and "condemn to death those victims whom the constitution endeavours to preserve" is worse than "solemn mockery," it is a "crime." Marbury v Madison, 1 Cranch at 179-180.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID GAETANO, et al.,)
Plaintiffs,)
)
v.) Civil Action No. 77-2115
)
EARL J. SILBERT,)
Defendant.)

FILED
FEB 16 1978
James E. Davey, Clerk

ORDER

The Court has considered plaintiffs' motion for a preliminary injunction, the defendant's motion to dismiss, and the other pleadings filed by counsel on both sides (including plaintiffs' motion for class certification). The Court has also heard oral argument. The plaintiffs have not established their standing to sue, have failed to state a claim upon which relief can be granted, and are barred by a previous decision in this Court. O'Shea v. Littleton, 414 U.S. 488(1973); Roe v. Wade, 410 U.S. 113(1973); Unborn Child Roe v. Gerald Ford, et al., No.76-1744 (D.D.C. 1976). Since the Court will dismiss the complaint, there is no occasion to rule specifically on the motion for preliminary or permanent injunction. It is, therefore, this 16th day of February 1978,

ORDERED: That defendant's motion to dismiss is GRANTED, and that this action is hereby dismissed with prejudice.

/s/ Louis F. Oberdorfer
United States District Judge